



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS
JOHN CORNYN

November 9, 2000

Mr. Michael V. Durham
Director of Legal Services
Windham School District
P.O. Box 40
Huntsville, Texas 77342-0040

OR2000-4361

Dear Mr. Durham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141127.

The Windham School District (the "school district") received a series of requests for information regarding employees' sick leave. The school district has released some of the requested information but claims that physician statements attached to applications for sick leave are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

As a preliminary matter, we must address some procedural issues. It seems that the requestor, by letter dated June 21, 2000, initially requested three types of information: 1) all employee requests for sick leave from the sick leave pool; 2) time sheets of employees donating sick leave to the pool; and 3) time sheets of employees who were granted leave days from the pool. The school district apparently received this request on June 26, 2000. In response to that request, the school district released most of the requested information, but it did not release the physicians' statements that were attached to the applications for sick leave.¹ The school district did not ask this office for a decision as to whether the Public Information Act permitted the school district to withhold the physicians' statements. *See* Gov't Code § 552.301. On August 29, 2000, the school district received a letter from the requestor which noted the school district's failure to release the physician statements and requesting that it do so along with another copy of the sick leave applications. It is in response to this second letter that the school district now asks this office for a decision under the Public Information Act.

¹There is also a question as to whether the school district provided the requested information regarding sick leave pool donations in the requested form. The school district now informs us that while it previously released the requested information regarding sick leave pool donations, it now intends to release the actual applications for sick leave pool donations.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body “must ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.” Gov’t Code § 552.301. Otherwise, the requested information is presumed to be public information. Gov’t Code § 552.302. As explained above, the school district originally received the request for information on June 26, 2000. Accordingly, the school district’s deadline for requesting an attorney general decision in regard to any information it wished to withhold expired ten business days later on July 11, 2000. *See id.* § 552.301. However, this office did not receive the school district’s request for an attorney general decision until September 7, 2000. Therefore, the school district missed its ten-day deadline. Consequently, absent a compelling reason to withhold the information, the requested records must be released. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Because you claim that the physicians’ statements are confidential under other law, we will address your claim.

You claim that the submitted physicians’ notes are confidential under section 552.101 in conjunction with the Medical Practices Act (“MPA”). Section 552.101 excepts from required public disclosure “information that is confidential by law, either constitutional, statutory, or by judicial decision.” Accordingly, section 552.101 encompasses confidentiality provisions such as those found in the MPA. The MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990).² Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1991). Moreover, information that is subject to the MPA includes

²Inasmuch as the Seventy-sixth Legislature intended no substantive change in the law in codifying the Medical Practice Act at subtitle B of title 3 of the Occupations Code, open records decisions interpreting the former section 5.08 of article 4495b of Vernon’s Texas Civil Statutes retain their relevance. *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, § 7, 1999 Tex. Gen. Laws 1431, 2440.

both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). We find that the submitted physicians' notes are medical records that are subject to the MPA. Therefore, the school district may release these records only in accordance with the MPA.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

³*See* Occ. Code §§ 159.004(5), 159.005(1) (providing that otherwise confidential medical information may be released to a person who bears a written consent of the patient, subject to certain requirements).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 141127

Encl: Submitted documents

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